

83-2042

NO.

Office - Supreme Court, U.S.
FILED
JUN 11 1984
ALEXANDER L STEVENS
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1983

RONALD ADAMS CONTRACTOR, INC.
AND RONALD J. ADAMS

PETITIONERS

VERSUS

OWL CONSTRUCTION CO., INC.

RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN A. STEWART, JR.
KULSE, NELSON & WANEK
610 Baronne Street
New Orleans, LA 70113
(504) 524-6221

Counsel for Petitioners



QUESTION PRESENTED

The sole question presented for review is whether or not, in the context of an ordinary business dispute, organized crime involvement on the part of defendants is a necessary element in a civil action against them under the Racketeer Influenced and Corrupt Organizations law (RICO), 18 U.S.C. § 1961, et seq.

PARTIES TO THE PROCEEDING

The parties to this proceeding are Owl Construction Co., Inc., Ronald Adams Contractor, Inc. and Ronald J. Adams. Ronald Adams Contractor, Inc. does not have a parent company, nor does it have any subsidiaries, other than wholly owned, or affiliates. Similar information with respect to Owl Construction Co., Inc. is unknown. Counsel for Owl Construction Co., Inc., H. P. Rowley, III, did list himself as an interested party in the proceeding before the Fifth Circuit Court of Appeals.

TABLE OF CONTENTS

	PAGE
Question Presented for Review.....	i
Parties to the Proceeding.....	ii
Table of Contents.....	iii
Table of Authorities.....	iv
Petition for Writ of Certiorari	
I. Opinions Below.....	1
II. Jurisdiction.....	2
III. Statutes Involved.....	2
IV. Statement of the Case.....	3
V. Reasons Relied on for Allowance of the Writ.....	5
a. The Statute.....	5
b. Criticisms.....	9
c. The Law and Legislative Intent.....	12
d. This Dispute.....	13
VI. Conclusion.....	15
Certificate of Service.....	16
Appendix A—Legislative Statement of Findings and Purpose, Organized Crime Control Act of 1970.....	A-1
Appendix B—Chapter 96, 18 U.S.C. Racketeer Influence and Corrupt Organizations.....	A-3
Appendix C—Complaint in <i>Owl Construction Co. Inc.</i> <i>v. Ronald Adams Contractor, Inc. and Ronald J.</i> <i>Adams, No. 83-2596, United States District</i> <i>Court, Eastern District of Louisiana</i>	A-18
Appendix D—Judgment of District Court on Defendants Motion to Dismiss in <i>Owl</i> <i>Construction Co., Inc. v. Ronald Adams</i> <i>Contractor, Inc. and Ronald J. Adams,</i> <i>No. 83-2596</i>	A-26
APPENDIX E—Judgment of United States Court of Appeals, Fifth Circuit, in <i>Owl Construction</i> <i>Co., Inc. v. Ronald Adams Contractor, Inc.</i> , <i>No. 83-3424</i>	A-27
Appendix F—Decision of United States Court of Appeals, Fifth Circuit, in <i>Owl Construction</i> <i>Co., Inc. v. Ronald Adams Contractor,</i> <i>No. 83-3424</i>	A-29

TABLE OF AUTHORITIES

CASE	PAGE
<i>Adair v. Hunt Intern. Resources Corp.</i> , 526 F.Supp. 736 (N.D. Ill. 1981).....	5, 7, 8, 10
<i>Albrecht v. Herald Company</i> , 390 U.S. 145, 88 S.Ct. 869 (1968).....	2
<i>Barr v. Wui/Tas, Inc.</i> , 66 FRD 109 (S.D. N.Y. 1975)	8
<i>Bell v. Health-Mor, Inc.</i> , 549 F.2d 342 (5th Cir. 1977)	9
<i>Bennett v. Berg</i> , 685 F.2d 1053 (8th Cir. 1982)	5, 7, 10
<i>Bunker Ramo Corp. Corp. v. United Business Forms, Inc.</i> , 713 F.2d 1272 (7th Cir. 1983)	7
<i>Divco Const. & Reality Corp. v. Merrill-Lynch</i> , 575 F.Supp. 712 (S.D. Fla. 1983)	7
<i>Eisenberg v. Gagnon</i> , 564 F.Supp. 1347 (E.D. Penn. 1983).....	10
<i>Harper v. New Japan Securities Intern., Inc.</i> , 545 F.Supp. 1002 (C.D. Cal. 1982)	7, 8
<i>Heppner v. Alyeska Pipeline Service Co.</i> , 665 F.2d 868 (9th Cir. 1981)	13
<i>Hokama v. E. F. Hutton & Co., Inc.</i> , 566 F.Supp. 636 (C.D. Cal. 1983)	7
<i>Johnson v. Rogers</i> , 551 F.Supp. 281 (C.D. Cal. 1982)	5
<i>King v. Lasher</i> , 572 F.Supp. 1377 (S.D. N.Y. 1983)	8
<i>Lau v. Nichols</i> , 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974)....	2
<i>Mauriber v. Shearson/American Exp., Inc.</i> , 567 F.Supp. 1231 (S.D. New York 1983)	10
<i>Miller v. California</i> , 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973)	10, 11
<i>Minpeco, S.A. v. Conticommodity Services, Inc.</i> , 558 F.Supp. 1348 (S.D. N.Y. 1983)	6, 8, 9

<i>Moss v. Morgan Stanley, Inc.</i> , 719 F.2d 5 (2nd Cir. 1983)	7
<i>Moss v. Morgan Stanley, Inc.</i> , 553 F.Supp. 1347 (S.D. N.Y. 1983)	8, 10
<i>Napper v. Anderson, Henley, Shields, Bradford & P.</i> , 500 F.2d 634 (5th Cir. 1974)	9
<i>Nation's Choice Vitamin Co. v. General Mills, Inc.</i> , 526 F.Supp. 1014 (S.D. N.Y. 1981)	4
<i>Nixon v. Fitzgerald</i> , — U.S. —, 102 S.Ct. 2690 (1982)	2
<i>Noland v. Gurley</i> , 566 F.Supp. 210 (D. Col. 1983)	7, 8, 14
<i>Noonan v. Granville-Smith</i> , 537 F.Supp. 23 (S.D. N.Y. 1981)	8
<i>Owl Construction Co., Inc. v. Ronald Adams Contractor, Inc. and Ronald J. Adams</i> , No. 83-2596 (E.D. La., July 6, 1983)	1
<i>Owl Const. Co., Inc. v. Ronald Adams Contractor</i> , No. 83-3424 (5th Cir., March 23, 1984)	1, 2
<i>Rector, Etc., of Holy Trinity Church v. United States</i> , 143 U.S. 547, 12 S.Ct. 511, (1892)	12
<i>Schacht v. Brown</i> , 711 F.2d 1343 (7th Cir. 1983)	7
<i>Smith v. United States</i> , 431 U.S. 291, 97 S.Ct. 756, 52 L.Ed.2d 324 (1977)	11
<i>Train v. Colo. Public Interest Research Group</i> , 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976)	12
<i>U.S. v. Alleman</i> , 609 F.2d 298 (7th Cir. 1979), cert. denied, 445 U.S. 946, 100 S.Ct. 1345, 63 L.Ed.2d 780 (1980)	7
<i>U.S. v. Bledsoe</i> , 674 F.2d 647 (8th Cir. 1982)	5
<i>U.S. v. Uni Oil, Inc.</i> , 646 F.2d 946 (5th Cir. 1981)	7

<i>United States v. American Trucking Ass'ns,</i> 310 U.S. 534, 60 S.Ct. 1059, 84 L.Ed. 1345 (1940)	12, 13
<i>United States v. Lemm,</i> 680 F.2d 1193, (8th Cir. 1982), cert. denied, — U.S. —, 103 S.Ct. 739 (1983)	9
<i>United States v. Turkette,</i> 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981)	6, 13
<i>United Steel Workers, Etc. v. Weber,</i> 443 U.S. 193, 99 S.Ct. 2721, 61 L.Ed.2d 480 (1979)	12
<i>Ward v. Illinois,</i> 431 U.S. 767, 97 S.Ct. 2085, 52 L.Ed.2d 738 (1977)	11
<i>Waterman S.S. Corp. v. Avondale Shipyards, Inc.,</i> 527 F.Supp. 256 (E.D. La. 1981)	6, 8
<i>Watt v. Alaska,</i> 451 U.S. 259, 101 S.Ct. 1673 68 L.Ed.2d 80 (1981)	13

STATUTES AND CONSTITUTIONAL PROVISIONS

18 U.S.C. § 1961, et seq.	i, 2, 5
18 U.S.C. § 1964	8
28 U.S.C. § 1254(1)	2
28 U.S.C. § 2101(c)	2
Federal Rules of Civil Procedure	
Rule 12(b)(1) and (6)	4
La. C.C.P. Art. 2592	14
La. C.C.P. Art. 3863	14
L.R.S. 38:2245	14
Rules of Supreme Court, Rule 20.4	2
Rules of Supreme Court, Rule 17.1(c)	2

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

RONALD ADAMS CONTRACTOR, INC.
AND RONALD J. ADAMS

PETITIONERS

VERSUS

OWL CONSTRUCTION CO., INC.

RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald Adams Contractor, Inc. and Ronald J. Adams pray that a writ of certiorari be issued by the Supreme Court to the United States Court of Appeals for the Fifth Circuit to review the judgment and decision of that Court issued on March 23, 1984, in *Owl Const. Co., Inc. v. Ronald Adams Contractor*, No. 83-3424.

OPINIONS BELOW

The decision of the Trial Court in *Owl Construction Co., Inc. v. Ronald Adams Contractor, Inc. and Ronald J. Adams*, No. 83-2596 (E.D. La., July 6, 1983) is set forth as Appendix "D". The judgment of the United States Court

of Appeals, Fifth Circuit, in the same matter, No. 83-3424 (CA 5, March 23, 1984), is set forth as Appendix "E", and the full decision of that Court is set forth in Appendix "F".

II

JURISDICTION

The Supreme Court has jurisdiction over this Petition under 28 U.S.C. § 1254(1). Judgment was rendered by the Court of Appeals, Fifth Circuit, on March 23, 1984. The Petition has been filed within ninety (90) days from the date the judgment of the Court of Appeals was rendered, and is, therefore, timely. 28 U.S.C. § 2101(c); Rules of the Supreme Court of the United States, Rule 20.4. Application was not made to the Court of Appeals for rehearing.

Jurisdiction is further invoked on the basis that the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. Rules of the Supreme Court of the United States, Rule 17.1(c). The Petition raises serious and unsettled questions of great public importance, and should, consequently, be granted. *Nixon v. Fitzgerald*, __ U.S. __, 102 S.Ct. 2690 (1982); *Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); *Albrecht v. Herald Company*, 390 U.S. 145, 88 S.Ct. 869 (1968).

III

STATUTES

The Petition requires consideration of the applicability of 18 U.S.C. § 1961, et seq. The complete text of the statute is set forth as Appendix "B".

STATEMENT OF THE CASE

Owl Construction Co., Inc. (hereafter "Owl") has alleged a violation of RICO on the part of Ronald Adams Contractor, Inc. (hereafter "Adams Contractor") and Ronald J. Adams (hereafter "Adams") by virtue of their having sent invoices to Owl requesting payment for materials furnished for a construction project, and having filed a lien affidavit or affidavit of claim for the payment of said invoices. The invoices, according to Owl, included charges for interest and attorneys fees which were not due. Owl does not otherwise contest the invoices. Owl seeks a civil remedy under RICO.

Federal Court jurisdiction is based only upon the alleged RICO action. The Complaint, Appendix "C", sets forth additional causes of action which are cognizable only under State law, and subject to the jurisdiction of the State courts. Pendent jurisdiction is sought over the state claims.

The claims allegedly subject to RICO are set forth in Count 1 of the Complaint. The other purely state causes of action over which pendent jurisdiction is sought are set forth in Counts 2 and 3 of the Complaint.

Owl alleges in the Complaint that the mails were used by Adams Contractor in transmitting the invoices described above to Owl and in connection with the lien affidavit or claim. Further, Owl alleges telephone conversations between the attorney for Adams Contractor and Adams relative to acceptance of payment for the debt and between the attorney for Adams Contractor and a bank to ascertain if the checks presented in payment were "good". Owl alleges Adams Contractor schemed to defraud Owl of finance charges and

attorneys' fees, and the uses of the mails and telephone, as just described, constitute mail fraud and wire fraud, giving rise to a pattern of racketeering activity under RICO.

Since the only claim giving rise to jurisdiction by the Federal Court is the alleged RICO violation, if that claim falls, as it should, the claims arising under state law would be dismissed for lack of jurisdiction. Federal courts can exercise pendent jurisdiction over state claims only if a viable claim exists which is subject to federal jurisdiction. *Nation's Choice Vitamin Co. v. General Mills, Inc.*, 526 F.Supp. 1014 (S.D. N.Y. 1981).

Adams and Adams Contractor filed a motion to dismiss for failure to state a claim upon which relief could be granted and for lack of jurisdiction over the subject matter pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure. The basis for the motion to dismiss for failure to state a claim upon which relief could be granted was the absence of an allegation of organized crime involvement in the Complaint, which allegation is necessary to state a civil claim under RICO. The basis for the motion to dismiss for a lack of jurisdiction over the subject matter was the absence of independent jurisdiction over the remaining state claims.

The district court granted the motion, and dismissed the Complaint. Appendix "D". Owl appealed to the Court of Appeals, Fifth Circuit. The Fifth Circuit reversed and remanded the case for further proceedings. Appendices "E" and "F".

Owl has not alleged any connection of Adams Contractor or Adams with organized crime. The Complaint is completely devoid of any such allegation. Additionally,

Owl, in its brief in support of its appeal to the Fifth Circuit, stated that it is not alleged that Adams is connected with organized crime.

V

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

a. The Statute

It should be clear from reading RICO itself that Congress was concerned with something more than merely the commission of certain crimes, the predicate crimes, before RICO may be applied. It was concerned with racketeering and organized crime. Congress did not intend simply to provide an additional remedy for an already compensable injury. *Johnsen v. Rogers*, 551 F.Supp. 281, 285 (C.D. Cal. 1982). RICO was not designed as a recidivist statute, imposing heavier sentences for crimes which are already punishable under other statutes. *Id.*; *U.S. v. Bledsoe*, 674 F.2d 647, 659 (8th Cir. 1982); *Bennett v. Berg*, 685 F.2d 1053, 1060 (8th Cir. 1982).

The statute is not to be viewed as an alternative, and cumulative, remedy for private plaintiffs alleging fraud. *Johnsen v. Rogers*, *supra* at 286; *Adair v. Hunt Intern. Resources Corp.*, 526 F.Supp. 736, 747 (N.D. Ill. 1981). RICO was not intended to be a catch-all reaching all concerted actions of two or more criminals involving two or more of the designated crimes. *U.S. v. Bledsoe*, *supra* at 659.

RICO was added, as Chapter 26, to Title 18 U.S.C. by the Organized Crime Control Act of 1970. P.L. 91-452; 84 Stat. 922. The provisions of RICO were contained in Title IX of the Act.

The Congressional Statement of Findings and Purpose of the Act, Appendix "A", makes it clear beyond a question that Congress was concerned only with organized crime and its eradication. 84 Stat. at 922. The findings outline the impact and influence which organized crime has had upon society and the economy and the fact that organized crime has continued to grow because of defects in laws existing at that time which were intended to combat organized crime. The findings admit of no other subject.

It was declared that the purpose of the Act was to eradicate organized crime in the United States. That was the sole purpose of the Act; no other purpose was stated. At 84 Stat. 922, the purpose of the Act was articulated:

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

This stated purpose was recognized by the United States Supreme Court in *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). The Court, there, held that the various titles of the Act provide the tools through which the goal set forth is to be accomplished. 101 S.Ct. at 2531. That purpose is the *raison d'etre* of RICO, and must be the lynchpin of any construction of it. *Minpeca, S.A. v. Conticommodity Services, Inc.*, 558 F.Supp. 1348, 1350 and 1351 (S.D. N.Y. 1983). The supporting civil remedies of the statute were designed against organized criminals and terrorists as an additional weapon in the crimefighters arsenal. *Id.; Waterman S.S. Corp. v. Avondale Shipyards, Inc.*, 527 F.Supp. 256, 259 and 260 (E.D. La. 1981).

The civil remedies provisions of RICO must be interpreted with careful attention to the purposes of the law. There must be avoided a liberalization or use of the literal terms of the law which would escort into federal court those actions which have been traditionally civil actions in state courts. *Noland v. Gurley*, 566 F.Supp. 210, 218 (D. Col. 1983).

RICO was not intended to apply to legitimate organizations, but in combatting organized crime; if there is no connection with organized crime, there is no violation of RICO. There must be some link to organized crime in order to sustain a claim for civil damages under RICO. *Hokama v. E. F. Hutton & Co., Inc.*, 566 F.Supp. 636 (C.D. Cal. 1983); *Harper v. New Japan Securities Intern., Inc.*, 545 F.Supp. 1002 (C.D. Cal. 1982); *Divco Const. & Realty Corp. v. Merrill-Lynch*, 575 F.Supp. 712 (S.D. Fla. 1983). The statute is limited to entities involved with organized crime or activities within the penumbra of that phrase. *Adair v. Hunt Intern. Resources Corp.*, *supra* at 747.

Petitioners are aware that three circuits, other than the Fifth Circuit, have ruled that organized crime involvement is not necessary to support a civil RICO claim. They submit, however, that the decisions are in error, and did not give due consideration to the legislative intent. *Bennett v. Berg*, *supra*, and *en banc* 710 F.2d 1361 (8th Cir. 1983); *Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1983); *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272 (7th Cir. 1983); *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5 (2nd Cir. 1983). For circuit court decisions involving criminal cases with similar findings, see *U.S. v. Alleman*, 609 F.2d 298 (7th Cir. 1979), cert. denied, 445 U.S. 946, 100 S.Ct. 1345, 63 L.Ed.2d 780 (1980); *U.S. v. Uni Oil, Inc.*, 646 F.2d 946 (5th Cir. 1981). There are, additionally, district

court decisions supporting the proposition that an organized crime nexus is not required.

Lower court decisions holding that organized crime is a necessary element for a civil RICO claim, but which have either been specifically overruled by an appellate court decision in the same case, or by a decision of the circuit court of appeals for that jurisdiction as noted in the immediately preceding paragraph, and now by the Fifth Circuit, include *Moss v. Morgan Stanley, Inc.*, 553 F.Supp. 1347 (S.D. N.Y. 1983); *Adair v. Hunt Intern. Resources Corp.*, *supra*; *Minpeco v. Conticommodity Services, Inc.*, *supra*; *Waterman S.S. Corp. v. Avondale Shipyards, Inc.*, *supra*; *King v. Lasher*, 572 F.Supp. 1377 (S.D. N.Y. 1983); *Barr v. Wui/Tas, Inc.*, 66 FRD 109 (S.D. N.Y. 1975); *Noonan v. Granville-Smith*, 537 F.Supp. 23 (S.D. N.Y. 1981). Petitioners submit, however, that the lower court decisions were, nevertheless, correct, and give proper weight to the legislative intent.

The statute provides that any person successful in a civil action pursuant to RICO shall recover treble damages. 18 U.S.C. § 1964(c). It is inconceivable that Congress would have intended to apply treble damages for ordinary violations of the predicate crimes. There is nothing in the legislative history to support it. *Noland v. Gurley*, *supra* at 218; *Harper v. New Japan Securities Intern., Inc.*, *supra* at 1007. This is, however, the manner in which the act will be applied if plaintiff's claim is allowed to stand.

§ 1964(c) also states that a successful litigant, in addition to treble damages, shall recover attorney's fees. Subsection (a) of § 1964 states that the District Court shall have the power to issue orders requiring any person to divest himself of any interest in any enterprise; impose

reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities which affect interstate or foreign commerce; or order of dissolution or reorganization of any enterprise.

Subsection (a) further states that the remedies are not limited to those listed. These remedies simply do not sound as though they were fashioned for ordinary violations of the predicate crimes. The remedies are harsh, and would fit only instances in which the predicate offenses are committed in an organized crime context.

Prior to RICO there was no private right of action under Federal Law for mail or wire fraud. *Bell v. Health-Mor, Inc.*, 549 F.2d 342 (5th Cir. 1977); *Napper v. Anderson, Henley, Shields, Bradford & P.*, 500 F.2d 634 (5th Cir. 1974). There is no indication in the legislative history that Congress intended to expand upon federal causes of action and jurisdiction for claims such as the one before the Court. See *Minpeco, S.A. v. Conticommodity Services, Inc.*, *supra* at 1350. Practically speaking, if plaintiff's interpretation of the law is allowed to stand, the Federal Courts will have jurisdiction over just about every civil claim for mail and wire fraud and other alleged violations of the predicate crimes. The purpose of RICO is to eradicate organized crime rather to subject ordinary criminals to the law's heightened punishment. *United States v. Lemm*, 680 F.2d 1193, 1198, (8th Cir. 1982), cert. denied, ___ U.S. ___, 103 S.Ct. 739 (1983).

b. Criticisms

Critics of the concept of including an element of

organized crime as a necessary requirement to a RICO claim have stated that such a requirement would be vague, and contrary to the unambiguous language of the statute. See, for example, *Eisenberg v. Gagnon*, 564 F.Supp. 1347 (E.D. Penn. 1983); *Mauriber v. Shearson/American Exp., Inc.*, 567 F.Supp. 1231 (S.D. New York 1983); *Bennett v. Berg*, 685 F.2d 1053 (8th Cir. 1982). The issue of the unambiguous nature of the language of the statute will be treated in another section, *infra*.

A few gratuitous remarks by senators and congressmen during legislative debate as to the difficulty in defining organized crime should not cause the Courts to ignore the intent of the statute. The fact that the statute's definition of racketeering activity was broadly worded and without explicit reference to organized crime reflects less of a Congressional desire to expand the scope of the legislation than the recognition that some flexibility was needed both as a practical matter and to avoid constitutional difficulties. *Adair v. Hunt Intern. Resources Corp.*, *supra* at 747.

The Courts have been faced with similar difficulties in evaluating obscenity laws. They have been called upon to define standards which must be used to identify obscene material that may be regulated, and have done so. *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973). See also *Moss v. Morgan Stanley, Inc.*, 553 F.Supp. at 1359.

In the *Miller* case, the Supreme Court held that sexual conduct, in order to be declared obscene, must be specifically defined by state law, as written or authoritatively construed. *Id.* 93 S.Ct. at 2615 and 2616. Obscenity statutes have traditionally been general in

nature. The specific prerequisites outlined in the *Miller* decision for defining obscene material which is subject to prohibition are also general in nature, but the Court held that such prerequisites provide fair notice to a dealer in such materials that his activities might bring prosecution. *Id.* 93 S.Ct. at 2616. Such is the case with respect to the issue at bar.

The term "organized crime" might be general in nature, but no more so than obscenity statutes which have been upheld by the Court. The Court, as it has done in the obscenity cases, can provide positive guidance to others in determining whether or not the element of organized crime has been satisfied. It is the duty of the Court to provide this guidance, despite any alleged burden in doing so. *Id.* 93 S.Ct. at 2618.

The standards for deciding whether or not material is obscene would be even more general than that which would be established for use in defining organized crime. The *Miller* decision held that, with respect to obscenity, the decision would be made based upon contemporary community standards. *Id.* 93 S.Ct. at 2619. It is the function of the jury to decide if material is obscene in this context, and it is inappropriate for the legislature to define the community standard. *Smith v. United States*, 431 U.S. 291, 97 S.Ct. 1756, 1674, 52 L.Ed.2d 324 (1977). Obscenity is judged according to the average person in the community. *Id.* 97 S.Ct. at 1766. This is, therefore, a locality standard. Any guidelines established with respect to organized crime need not be so general and flexible.

The Court can refine the scope of a statute to meet any objection as to overbreadth. *Ward v. Illinois*, 431 U.S. 767, 97 S.Ct. 2085, 2089 and 2090, 52 L.Ed.2d 738 (1977).

An element of organized crime should not be discarded simply because it might be difficult to define.

c. The Law and Legislative Intent

It is conceded that the RICO cause of action sought by Owl against petitioners could conceivably fall within the literal wording of the law since the statute does not specifically require an organized crime nexus. The legislative intent, as expressed in the history, must, however, be considered. It is a familiar rule that a thing may be within the letter of the statute, and yet not within the statute, because not within its spirit nor within the intention of its makers. *United Steel Workers, Etc. v. Weber*, 443 U.S. 193, 99 S.Ct. 2721, 2726, 61 L.Ed.2d 480 (1979); *Rector, Etc., of Holy Trinity Church v. United States*, 143 U.S. 547, 12 S.Ct. 511, 512 (1892).

In the interpretation of statutes, it is the function of the courts to construe the language to give effect to the intent of Congress. When the words of a statute produce absurd or unreasonable results plainly at variance with the policy of the legislation as a whole, the Courts must follow the purpose, rather than literal words. *United States v. American Trucking Ass'n*, 310 U.S. 534, 60 S.Ct. 1059, 1063 and 1064, 84 L.Ed. 1345 (1940); *Rector, Etc. of Holy Trinity Church v. United States*, *supra* 12 S.Ct. at 512.

No matter how clear the words of a statute might be on their face, there is no rule of law which forbids resort to an aid to a construction of those words. *Train v. Colo. Public Interest Research Group*, 426 U.S. 1, 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976); *United States v. American Trucking Ass'n*, *supra* 60 S.Ct. at 1064. Emphasis should be laid upon the purpose as a whole of Congress in analyzing the meaning

of its laws. *United States v. American Trucking Ass'ns, supra* 60 S.Ct. at 1064. Ascertainment of the meaning which might appear to be apparent on the face of a statute does not end the inquiry. *Watt v. Alaska*, 451 U.S. 259, 101 S.Ct. 1673, 1677, 68 L.Ed.2d 80 (1981). Absurd results are to be avoided. *United States v. Turkette, supra* 101 S.Ct. at 2527.

In *Heppner v. Alyeska Pipeline Service Co*, 665 F.2d 868 (9th Cir. 1981), the Court was faced with the question of whether or not the strict liability damage provisions of the Trans-Alaska Pipeline Authorization Act would apply to ordinary personal injury and wrongful death claims unconnected with environmental injury. The literal wording of the Act would have allowed the claim, but the Court, after reviewing the legislative history, was convinced that Congress did not intend for the Act to encompass such actions. The factual situation presented there is analogous to the case at hand. The Court held that the plain meaning rule is no longer considered an absolute prohibition, but a flexible principle in ascertaining the intent of Congress. *Id.* at 870.

d. This Dispute

The facts of this case are too far removed from the intent of Congress in enacting RICO and in attacking the evils which it sought to eradicate. They involve, at best, a garden variety fraud action. Organized crime involvement on the part of petitioners is not alleged, and more importantly, has been specifically denied by Owl. Congress clearly intended RICO to serve only as a means to further combat organized crime. The very name of the law itself signifies that intent: Organized Crime Control Act of 1970; Racketeer Influenced and Corrupt Organizations.

RICO was not intended to apply to ordinary contractual and other disputes between private litigants; it was not intended to sweep within the bounds of the law disputes such as this between private parties, and federalize cases which traditionally would be brought as civil actions in state court. RICO is not broad enough to embrace every fraudulent action. *Noland v. Gurley, supra* at 218.

If an action such as the one presently before the Court is allowed to stand, the federal courts will be faced with a flood of litigation involving pure contractual and business disputes, without any type of alleged connection with organized crime. This, obviously, was not the intent of Congress.

The instant dispute is nothing more than a claim by Owl that interest and attorney's fees were not due on the debt owed to Adams Contractor. Owl admits that it owed Adams Contractor a considerable sum of money, Fourteen Thousand Three Hundred Thirty-Six (\$14,336.00) Dollars. See paragraph 12 of the Complaint. Owl admits that it paid the sums, but alleges that it paid said sums under protest and duress. If Owl did not owe the sums, it should not have paid them.

If Owl claimed that the sums were not actually owed as alleged in the lien affidavit, and wanted the lien or claim removed from the public records, its remedy was to file suit in Louisiana courts to have the lien removed. This could have been done very quickly through the use of summary process and a rule to show cause or writ of mandamus. La. C.C.P. Art. 2592; La. C.C.P. Art. 3863 and Comment (a); L.R.S. 38:2245. The use of summary process would have provided Owl with a quick means of relief for an alleged

improper lien affidavit. Owl chose not to use this remedy, but to pay the sums claimed. It should not now be heard to complain over something which is its own fault.

VI

CONCLUSION

The intent of Congress having been considered, it is obvious that the dispute in issue between the parties does not fall within the intended scope of RICO. The entire purpose of RICO was to combat organized crime. There is no alleged link between defendants and organized crime. The RICO complaint must, therefore, fall. The pendent claims under state law must then fall for lack of jurisdiction.

WHEREFORE, Ronald Adams Contractor, Inc. and Ronald J. Adams pray that the writ issue and the decision of the Court of Appeals for the Fifth Circuit be reversed.

JOHN A. STEWART, JR.
HULSE, NELSON & WANEK
610 Baronne Street
New Orleans, LA 70113
(504) 524-6221

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 1984, H. P. Rowley, III, counsel of record for Owl Construction Co., Inc., was served with a copy of the above and foregoing Petition for Writ of Certiorari, together with the applicable appendices, by depositing the documents in the United States Mails, with First Class Postage pre-paid, addressed to him at his office address, 1510 Calhoun Street, New Orleans, LA 70118.

JOHN A. STEWART, JR.

APPENDIX "A"

ORGANIZED CRIME CONTROL ACT OF 1970

For Legislative History of Act, see p. 4007

PUBLIC LAW 91-452; 84 STAT. 922

[S.30]

An Act relating to the control of organized crime in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Organized Crime Control Act of 1970."

STATEMENT OF FINDINGS AND PURPOSE

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime

activities in the United States weaken the stability of the National economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

APPENDIX "B"

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

- 1961. Definitions.
- 1962. Prohibited racketeering activities.¹
- 1963. Criminal penalties.
- 1964. Civil remedies.
- 1965. Venue and process.
- 1966. Expedition of actions.
- 1967. Evidence
- 1968. Civil investigative demand.

§ 1961. Definitions

As used in this chapter—

- (1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to

obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity of the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections¹ (a), (b), or (c) of this section.

§ 1963. Criminal penalties.

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to,

the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise;

imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

§ 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in

the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpoenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpoena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating

that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

§ 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

§ 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereof, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be *prima facie* proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced

under this chapter, and

(ii) any case or proceeding arising from such investigation.

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner

relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

- (i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.
- (j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

APPENDIX "C"

United States District Court
Eastern District of Louisiana

Civil Action
No. 83-2596
Section J. Mag. 4
Jury Trial Demanded

OWL CONSTRUCTION CO., INC.,

Plaintiff,

V.

RONALD ADAMS CONTRACTOR, INC.
and RONALD J. ADAMS,

Defendants.

Complaint

1. The jurisdiction of the court is invoked under 18 USC 1964(c), 28 USC 1331, and the court's ancillary and pendent jurisdiction.

Parties

2. Plaintiff OWL Construction Co., Inc. ("OWL") is a Louisiana corporation which has its principal place of business in the Eastern District of Louisiana. OWL is licensed to do business and is doing business in the Eastern District of Louisiana.

3. Defendant Ronald Adams Contractor, Inc. ("Adams") is a Louisiana corporation which has its principal place of

business in the Eastern District of Louisiana. Adams is licensed to do business and is doing business in the Eastern District of Louisiana.

4. Defendant Ronald J. Adams is a competent major who resides and is domiciled in the Eastern District of Louisiana.

Background

5. OWL is a subcontractor on the Golden Meadow Floodgate Job in Lafourche Parish. This is a project of the U.S. Army Corps of Engineers.

6. On or about December 21, 1982, Adams submitted to OWL a proposal to supply approximately 5,000 cubic yards of sand to OWL. There were no provisions in the proposal for finance charges, attorney's fees, or other liquidated damages in the event of late payment by OWL. OWL accepted the proposal as written.

7. During January 1983, Adams delivered the sand to the job site, and later mailed two invoices on the Adams letterhead to OWL. The letterhead invoice dated January 4, 1983 was for \$11,664.00, and the letterhead invoice dated January 13, 1983 was for \$6,672.00. There were no provisions in these letterhead invoices for finance charges, attorney's fees, or other liquidated damages in the event of late payment by OWL.

8. None of OWL's employees agreed with Adams to pay finance charges, attorney's fees, or other liquidated damages in the event of late payment by OWL, and none of OWL's employees had the authority to do so.

9. In letters which Adams mailed to OWL, Adams admitted that all the provisions of its contract with OWL were integrated into the proposal dated December 21, 1983.

10. On or about March 9, 1983, Ronald J. Adams, president of Adams, filed a lien affidavit in the mortgage records of Lafourche Parish (Entry No. 583518). In the affidavit, Adams alleged that OWL owed Adams \$15,052.66. Annexed to the affidavit were two form invoices:

No. 50516, dated Jan. 17, 1983, for \$11,664.00

No. 48456, dated Jan. 27, 1983, for \$6,672.00.

These two printed invoices contained provisions for finance charges and attorney's fees in the event of late payment by OWL.

12. The lien affidavit and the annexed affidavits were false and fraudulent. OWL owed Adams \$14,336.00, not \$15,052.66. The form invoices had never been accepted by OWL and had never been delivered to OWL. No officer or employee of OWL ever agreed to pay finance charges, attorney's fees or other liquidated damages to Adams in the event of late payment by OWL.

13. Adams knew that the lien affidavit and the annexed form invoices were false and fraudulent, and Adams acted in bad faith and with malice toward OWL.

14. In a certified letter to OWL dated May 10, 1983, Adams' attorney notified OWL about the lien affidavit, and demanded \$15,052.66 plus \$3,763.17 attorney's fees.

15. At this time, OWL was applying for a large bond which would qualify it to bid on large construction jobs in Lafourche Parish and elsewhere. Because this lien affidavit seriously jeopardized this application, OWL wanted it cancelled immediately.

16. On May 17, 1983, OWL sent a special representative to Adams' attorney in Thibodaux. Under protest and duress, OWL tendered to Adams' attorney a check for \$15,052.66, the full amount of the debt alleged in the lien affidavit. After conferring with Adams by telephone, Adams' attorney accepted the check but refused to cancel the lien affidavit unless OWL also tender a \$3,763.17 check for attorney's fees. Under protest and duress, OWL tendered and Adams' attorney accepted a check for \$3,763.17. By telephone, Adams' attorney verified that the two checks were good. By mail, the two checks were presented to OWL's bank and paid.

17. On May 17, 1983, Adams' attorney used interstate facilities to cancel the lien affidavit (Entry No. 583882).

Count 1

18. OWL was injured in its business and in its property by reason of violations of the Racketeer Influenced and Corrupt Organizations Act by Ronald J. Adams.

19. Adams is an enterprise which is engaged in and the activities of which affect interstate and foreign commerce.

20. Ronald J. Adams is employed and associated with that enterprise, and is president of the enterprise.

21. Ronald J. Adams violated 18 USC 1962(c), and he conspired to violate 18 USC 1962(c) with persons whose names are unknown at this time. While Ronald J. Adams was employed by and associated with Adams, he participated in the conduct, directly and indirectly in Adams' affairs thru a pattern of racketeering activity.

22. The pattern of racketeering activity were two or more acts of mail fraud and wire fraud during 1982 and 1983. Ronald J. Adams formed a scheme to defraud OWL of finance charges and attorney's fees by preparing false invoices which contained provisions for finance charges and attorneys fees in event of late payment by OWL, by filing a false lien affidavit, by refusing to cancel the lien affidavit unless OWL paid attorney's fees, and by other acts which may be proved at the trial. Ronald J. Adams intended to defraud OWL. Ronald J. Adams used the mail, the telephone, and wire to further this scheme.

23. By reason of this violation of 18 USC 1962 (c & d), OWL has been injured in its business and property in the amount of \$14,007.83.

WHEREFORE, OWL prays for judgment in its favor and against Ronald J. Adams for threefold the \$14,007.83 damages which it sustained, plus interest from date of judicial demand until paid, all costs, and reasonable attorney's fees.

Count 2

24. Adams abused the process of Louisiana courts by filing the false and fraudulent lien affidavit in bad faith, and by refusing to cancel the lien affidavit unless OWL paid attorney's fees which it did not owe to Adams.

Adams' ulterior motives were to extort finance charges and attorney's fees from OWL, to punish OWL for outbidding Adams on construction jobs, to deter OWL from doing business in Lafourche Parish, to disparage OWL reputation, to interfere with OWL's subcontract on the Golden Meadow Floodgate Job, and other ulterior motives which may be proved at trial.

25. Adams' acts and practices were unfair and deceptive under Louisiana law.

26. OWL paid the finance charges and attorney's fees to Adams under duress. There were no provisions in the contract between OWL and Adams for finance charges, attorney's fees, or other liquidated damages in the event of late payment by OWL.

37. Adams has been unjustly enriched in the amount of \$4,479.83. OWL has been impoverished by \$4,479.83. There is a connection between the enrichment and the impoverishment. There is no justification or cause for the enrichment and impoverishment. There may be no other remedy at law for OWL.

38. During all material times, Ronald J. Adams was acting within the course and scope of his employment as Adams' president.

39. As a result of Adams' actions, OWL has sustained damages in the amount of \$9,528.00.

WHEREFORE, OWL prays for judgment in its favor and against Adams for (a) restitution of \$4,479.83, (b) damages of \$9,528.00, (c) interest from date of judicial demand until paid, (d) all costs, and (e) reasonable attorney's fees.

Count 3

40. On or about December 21, 1982, Adams' attorney mailed to OWL's bonding agent a copy of a demand letter which was addressed to a former creditor of OWL. Adams and its attorney knew or should have known that OWL had paid that debt in full November 10, 1982.

41. The purpose of this act was to disparage and discredit OWL, to make it more difficult for OWL to obtain bonds, to deter OWL from doing business in Lafourche Parish, to punish OWL for outbidding Adams on construction jobs, and for other purposes which may be proved at the trial.

42. Adams' act and practice was unfair and deceptive.

43. As a result of Adams' acts and practice, OWL has sustained injury in the amount of \$1,000.00.

44. If Adams' acts and practices are not enjoined, OWL will sustain permanent and irreparable injury.

WHEREFORE, OWL prays for judgment in its favor and against Adams for (a) \$1,000.00 damages, (b) a permanent injunction which prohibits Adams from engaging in unfair and deceptive acts and practices, (c) interest from date of judicial demand until paid, (d) all costs, and (e) reasonable attorney's fees.

45. OWL demands a jury trial on all issues.

/S/ Signed

H. P. ROWLEY, III
1510 Calhoun Street
New Orleans, LA 70118
504/897-0234
Attorney for Plaintiff.

Dated: May 25, 1983

APPENDIX "D"

**United States District Court
Eastern District of Louisiana**

**Civil Action
No. 83-2596
Section J.**

OWL CONSTRUCTION CO., INC.,

Plaintiff,

V.

**RONALD ADAMS CONTRACTOR, INC.
and RONALD J. ADAMS,**

Defendants.

JUDGMENT

The Court having granted the motion of defendants to dismiss,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Ronald Adams Contractor, Inc. and Ronald J. Adams, against plaintiff, Owl Construction Co., Inc., dismissing said plaintiff's suit, with costs.

Dated at New Orleans, Louisiana, this 6th day of July, 1983.

/S/ Signed

UNITED STATES DISTRICT JUDGE

APPENDIX "E"

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 83-3424
Summary Calendar

D.C. Docket No. 83-2596 "J"

OWL CONSTRUCTION CO., INC.,

Plaintiff-Appellant,

versus

RONALD ADAMS CONTRACTOR, INC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before REAVLEY, RANDALL and WILLIAMS, Circuit
Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be and the same is

hereby remanded to the said District Court in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that defendants-appellees pay to plaintiff-appellant the costs on appeal, to be taxed by the Clerk of this Court.

March 23, 1982

ISSUED AS MANDATE:

APPENDIX "F"

OWL CONSTRUCTION CO., INC.,

Plaintiff-Appellant,

v.

RONALD ADAMS CONTRACTOR, INC., et al.,

Defendants-Appellees.

**No. 83-3424
Summary Calendar.**

**United States Court of Appeals,
Fifth Circuit.**

March 23, 1984.

Subcontractor on federal construction project appealed dismissal of its complaint against materials supplier by the United States District Court for the Eastern District of Louisiana, at New Orleans, Patrick E. Carr, J., for failure to state claim upon which relief could be granted. The Court of Appeals held that it was not necessary that subcontractor allege that materials supplier was involved in organized crime to state cause of action under the Racketeer Influenced and Corrupt Organizations Act; it was enough that subcontractor asserted that alleged mail and wire fraud constituted pattern of racketeering activity and that supplier was enterprise through which other defendant conducted his racketeering activities.

Reversed and remanded.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before REAVLEY, RANDALL and WILLIAMS,
Circuit Judges.

PER CURIAM:

Plaintiff Owl Construction Company, Inc. ("Owl") appeals the dismissal of its complaint for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). We reverse and remand.

Owl, a subcontractor on a federal construction project in Lafourche Parish, Louisiana, hired Ronald Adams Contractor, Inc. ("Contractor") to deliver 5,000 cubic yards of sand for the project.¹ After making delivery, Contractor sent Owl two invoices totalling \$18,336.00. When Owl paid only \$4,000.00 of this amount, Ronald J. Adams, president of Contractor, filed a lien affidavit against the project claiming that Owl owed contractor \$15,052.66. Attached to the affidavit was a purported copy of the invoices Contractor had sent to Owl, which contained provisions for finance charges and attorneys' fees in the event of late payment.

After the lien was filed, Owl protested that it owed Contractor \$14,336.00, not \$15,052.66, and that neither of the two invoices it received contained any provisions for finance charges or attorney's fees in the event of late payment. Nevertheless, Owl paid Contractor \$15,052.66, plus \$3,763.17 in attorneys' fees, to have the lien cancelled.

¹ For purposes of reviewing the granting of a Rule 12(b)(6) motion to dismiss, we accept the plaintiff's factual allegations as true.

Owl then filed this complaint against Ronald J. Adams, seeking treble damages under the civil remedies provisions of Title IX of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations), popularly known as "RICO." Owl alleges that Adams both participated in and conspired to participate in mail and wire fraud when filing the lien affidavit and invoices against he project. RICO makes it unlawful for any person to conduct the affairs of an enterprise through a pattern of racketeering activity.² Owl asserts that this mail and wire fraud constituted a pattern of racketeering activity and that Contractor was the enterprise through which Adams conducted his racketeering activities. Adams also alleged pendant state claims against Contractor.

The defendants moved to dismiss Owl's RICO action because Owl had failed to allege that the defendants were involved in organized crime. The district court granted the defendant's motion and, because federal jurisdiction was predicated upon RICO, Owl's pendant state claims were also dismissed.

In *United States v. Uni Oil, Inc.*, 646 F.2d 946 (5th Cir.1981), we held that "[although the legislative history of RICO vividly demonstrates that it was primarily enacted

² 18 U.S.C. § 1962 (1982) provides in pertinent part:

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a patern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections...of this section.

to combat organized crime, nothing in that history, or in the language of the statute itself, expressly limits RICO's use to members of organized crime." *Id.* at 953. Although *Unio Oil* involved a criminal prosecution, we see no reason to limit our holding in this regard to criminal proceedings. We join the Second, Seventh and Eighth Circuits in holding that civil actions under RICO are not limited to contexts in which a tie to organized crime is alleged. *See Moss v. Morgan Stanley Inc.*, 719 F.2d 5, 21 (2d Cir.1983); *Bunker Ramo Corporation v. United Business Forms, Inc.*, 713 F.2d 1272, 1287 n. 6 (7th Cir.1983); *Bennett v. Berg*, 685 F.2d 1053, 1063-64 (8th Cir.1982). These courts and the commentators have persuasively and exhaustively explained why the RICO statute and its legislative history do not require a RICO plaintiff to prove the defendant is connected to organized crime; we need not reiterate those reasons here. *See, e.g., Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 Notre Dame L.Rev. 237, 284-85 (1982); Note, *Civil RICO: The Temptation and Impropriety of Judicial Restrictions*, 95 Harv.L.Rev. 1101, 1106-1109 (1982). Though we intimate no view as to the merits of Owl's complaint, it cannot be dismissed on the ground that Owl failed to allege that Adams was involved in organized crime. Thus, we REVERSE and REMAND the case for further proceedings.

